

**BOARD OF APPEALS  
for  
MONTGOMERY COUNTY**

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**Case No. A-5822**

**APPEAL OF G. PULLA REDDY**

OPINION OF THE BOARD  
(Hearing Date: October 30, 2002)  
(Effective Date of Opinion: January 29, 2003)

Case No. A-5822 is an administrative appeal in which the appellant charges administrative error on the part of the County's Department of Permitting Services (DPS) in its issuance of Notices of Violations (NOVs) dated August 8, 2002 and August 16, 2002.

A public hearing was held pursuant to Section 59-A-4.3 of the Zoning Ordinance. Assistant County Attorney, Malcolm Spicer, represented Montgomery County, Maryland. Appellant Pulla Reddy appeared with Dr. Deborah Louis, who spoke on behalf of Mr. Reddy.

Decision of the Board: Administrative appeal **denied**.

**EVIDENCE PRESENTED TO THE BOARD**

1. Appellant is the owner and operator of a group home located at 9500 Biltmore Drive, Silver Spring, Maryland, in the R-60 zone.

2. The group home operates under a special exception granted by the Board of Appeals in Case No. S-2481 and a use and occupancy permit granted by DPS dated April 9, 1987.

3. The 1987 use and occupancy permit allows a total of 8 occupants to reside at the group home.

4. Stanley Garber, a DPS inspector, inspected the property on August 8, 2002. During his inspection Mr. Garber observed that there were 14 occupants at the group home, 12 residents and 2 caregivers. Mr. Garber also observed that the building at the property had been altered. Specifically, a wall had been constructed at the lower level

of the group home, converting a storage room into an additional bedroom. The bedroom does not meet the minimum qualifications for a room size under the BOCA Building Code; nor are there any egress windows as defined by the BOCA Code. Mr. Garber also reviewed DPS records and determined that DPS had not issued a permit for the alteration.

5. DPS issued NOVs on August 8, 2002 and August 16, 2002 citing the excessive occupants and unauthorized structural alterations at the group home.

6. DPS official, Shariar Amiri, testified that by increasing the group home's occupants to 14, it was in a different "use group" than a group home with 8 occupants would be under the County Building Code and the BOCA Code. Specifically, a group home with 14 occupants is considered to be in the "R-4" use group, requiring a building sprinkler and larger doors under the stairs than a group home with only 8 occupants. In addition, a group home which increased its occupancy from 8 to 14 would have to apply for and obtain a new permit for its new use group category.

7. Dr. Louis, the appellant's consultant, conceded that the group home was operating in violation of the Building Code. Dr. Louis further stated that the home had begun the process to obtain a new use and occupancy certificate.

8. The Board finds the testimony of Mr. Garber regarding conditions at the property to be credible and persuasive.

9. The Board finds the testimony of Mr. Amiri regarding building code requirements at the property to be credible and persuasive.

## **FINDINGS OF THE BOARD**

1. Section 59-A-4.3(e) of the Zoning Ordinance authorizes *de novo* appeals to the Board from any action taken by a department of the County government. Therefore, the NOVs are appealable, *de novo*, to the Board.

2. Because the issuance of the NOVs were heard *de novo*, the Board hearing was an entirely new hearing on the propriety of the NOVs as if no determination had been made, by DPS. *Boehm v. Anne Arundel County*, 54 Md. App. 497, 511, 459 A.2d 590, 599, cert. denied, 297 Md. 108 (1983)

3. Montgomery County had the burden of demonstrating that the NOVs were properly issued. Since the Board hearing proceeded as an original administrative determination, the burden of proof and burden of persuasion were allocated as with the original determinations by DPS and DHCA. See, *Lohman v. Arundel Corp.*, 65 Md. App. 309, 318, 500 A.2d 344, 349 (1985). The *de novo* hearing puts all parties back at

square one to begin again just as if the DPS determination appealed from had never occurred. See, *General Motors Corp. v. Bark*, 79 Md. App. 68, 79, 555 A.2d 542, 547 (1989).

4. The County established that the NOV's were properly issued, specifically:

(a) DPS properly issued notice that the group home violated Section 8-24(a) of the County Code. Section 8-24(a) requires a permit to alter a building or change the occupancy of a building from one use group to another.<sup>1</sup> At the time the NOV's were issued, the group home had increased its occupancy level from 8 to 14 persons, resulting in a change from a single-family residence group home to a mid-level group home under the Building Code and BOCA Code. In addition, the group home altered the building without having obtained a permit for the alteration work.

(b) DPS properly issued notice that the group home violated Section 8-28(b) of the County Code.<sup>2</sup> Section 8-28(b) prohibits use or occupancy of a building that has been changed from one use group to another until DPS has issued a certificate of occupancy approving the change.

5. The evidence is uncontroverted that the group home increased its occupancy, thereby changing to a different use group. It did so without first obtaining a new use and occupancy certificate or undertaking any of the necessary alterations to obtain the certificate or ensure the safety of the building occupants. Therefore,

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<sup>1</sup>Section 8-24(a) states:

**Sec. 8-24. Application for permit.**

(a) *When required.* It shall be unlawful to construct, enlarge, alter, remove or demolish a building or change the occupancy of a building from one use group to another requiring greater strength, exitway or sanitary provisions; or to change to a prohibited use; or to install or alter any equipment for which provision is made or the installation of which is regulated by this chapter, without first filing an application with the department in writing and obtaining the required permit therefor; except, that ordinary repairs as defined in section 8-3 which do not involve any violation of this chapter shall be exempt from this provision.

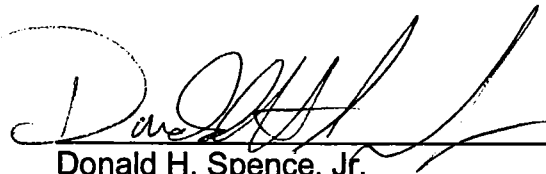
<sup>2</sup>Section 8-28(b) states:

**"Sec. 8-28. Certificate of use and occupancy.**


(b) *Buildings hereafter altered.* It shall be unlawful for any person to use or occupy a building hereafter enlarged, extended or altered to change from one use group to another, in whole or in part until a certificate of use and occupancy shall have been issued by the director certifying that the work has been completed in accordance with the provisions of the approved permit; . . ."

On a motion by Donna Barron, seconded by Louise Mayer, with Board members Allison Fulz, Angelo, and Chairman Donald H. Spence, Jr., in agreement, the Board voted to **deny** the appeal. The Board adopts the following Resolution:

**BE IT RESOLVED** by the Board of Appeals for Montgomery County, Maryland that the opinion stated above be adopted as the Resolution required by law as its decision on the above entitled petition.

  
Donald H. Spence, Jr.  
Chairman, Montgomery County Board of Appeals

Entered in the Opinion Book  
of the Board of Appeals for  
Montgomery County, Maryland  
this 29<sup>th</sup> day of January, 2003.

  
Katherine Freeman  
Executive Secretary to the Board

**NOTE:**

Any request for rehearing or reconsideration must be filed within ten (10) days after the date the Opinion is mailed and entered in the Opinion Book (See Section 2-A-10(f) of the County Code).

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County in accordance with the Maryland Rules of Procedure.